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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary

Application No.

10/538,270

Applicant(s)

YAMASHITA ET AL.

Examiner

Kris Mittal

Art Unit

3688

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This communication is in response to the amendment received on April 15, 2009 with Request for Continued Examination (RCE) received on May 15, 2009. Claims 1, 12, 13, 15 and 16 have been amended. This is a non-final office action. Claims 1-13 and 15-19 are pending and are considered below.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 15, 2009 with Request for Continued Examination filed on May 15, 2009 has been entered.

Examiner's Note

3. **As to claims 1 and 12**, it appears that the Applicant is attempting to invoke 35 U.S.C. 112, 6th paragraph by using "means-plus-function" or "steps-plus-function" language, such as "means for storing", "means for specifying", means for storing, and "means for extracting" as the four parts of the above apparatus and system claims. Further, the Examiner notes that in each case, the word "means" is also preceded by

the word(s) "storage", "processing" and "incentive" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function.

In order to successfully invoke the sixth paragraph, a three-prong test must be met. Namely, (1) the claim must use means-plus-function or step-plus-function language; (2) the claim itself must not provide structural limitations to the means-plus-function, or step-plus-function language; and (3) the specification must recite explicit physical structural limitations for the means-plus-function, or step-plus-function language in the claim.

The above claims pass the first two prongs of the three prong test. They, also appear to pass the third prong. The specification on pages 11-13 makes reference to Figure 1 that shows a "Management Server comprising a viewing history DB, a content management DB and other DBs (databases) for storage and various Processing Units, as "structure" that perform the functions described in the above claims. Therefore, the Examiner considers that the 35 U.S.C. 112, 6th paragraph has been successfully invoked.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. **Claims 1, 9-10 and 12-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

As to claims 1 and 12-16, it is not clear if the content supplier distributing content to a user terminal is also the content supplier to the real place and if the content supplier is paid by the user or by the real place or both thus rendering the claims indefinite. The Examiner will interpret that there is only one content supplier and that Claim 1 recites: storing first content information that includes the content (e.g. a movie) and the identity of the content supplier (e.g. movie distributor). It further recites that this same content supplier also supplies the content (e.g. movie) to a real place. In the next step of the claim, the content (e.g. movie) is distributed to a user for display on his home terminal. The third step tracks the viewing history of the content by the user on his home terminal. Finally, the last step determines the amount to charge the user for viewing the content and determines the identity of the content supplier.

As to claims 9 and 10, it is not clear what is the difference between "payment to the content supplier *from the user*" and "charge from the user" as an incentive to the content supplier thus rendering the claims indefinite. The Examiner will interpret the two claims to mean that a payment is calculated and collected from the user based on the viewing history information. And that the calculated payment includes a charge which is given to the content supplier as an incentive or royalty.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1-3, 6, 9 and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al., U.S. Publication No. 20040117831 (hereinafter referred to as Ellis) in view of Terada, U.S. Publication No. 20030149665 and Yacenda et al., U.S. Publication No. 20040015993 (hereinafter referred to as Yacenda).**

As to claim 1, Ellis discloses a content information processing apparatus comprising:

first storage means for storing first content information indicating content that is to be screened for a user at a real place (0086: storing program guide information; 0245: the local hub may provide information such as local theater productions, movies playing at local theaters) and content supplier information identifying a content supplier that supplies the content for screening at the real place (0009: the program guide may provide a main menu screen that provides interactive hyperlinks to related items or features within the given category of interest; 0147: list of feedback options; may allow user to send e mail message to the guide provider, television service provider or any specific programmer);

viewing information processing means for specifying second content information indicating that the content is distributed to a terminal of the user via a network (Fig. 29, block 373: displays information related to selected feature; 0009: personalized hubs contain feature and information that are selected by the user; 0136: the user may select any individual movie to find out when it is available or any other action appropriate to selection of the movie), the terminal being configured to allow the user to view the content (0097: server 22 in television distribution facility may be configured in a client-server arrangement in which user television equipment device acts as a client processor; 0124: screen 140 shows a list of movies that are available to be viewed).

Ellis does not explicitly disclose:

viewing history storage means for storing viewing history information including at least the second content information and indicating a history of the user viewing the content on the terminal of the user;

incentive means for extracting the second content information of the content distributed to the terminal of the user from the viewing history information, specifying that the content supplier is associated with the extracted second content information of the content distributed to the terminal of the user; and

calculating a payment to the content supplier that supplies the content for screening at the real place based on the viewing history information including the second content information and indicating the history of the user viewing the content on the terminal of the user and based on the first content information of the content to be screened for the user at the real place.

Terada discloses:

storing viewing history information including information associated with distributed content (Fig. 16: viewing history information; Fig. 25, block 5260: store viewing history information);

extracting information from the viewing history (Fig. 27, block S292: read viewing history information);

while Terada discloses an associated sponsor (Fig. 2), Yacenda discloses associated content supplier (Fig. 2A, blocks 21, 23 and 24: content provider sends content to distribution device, local device communicates back content is delivered, central system updates central device database)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for storing viewing history of the content distributed to the user terminal, extracting or identifying the content information from the viewing history and associating the content supplier of the content extracted from the viewing history to enable the system provider to identify content suppliers of the content viewed by the users so that the content supplier could be paid correctly for the content provided by him/her.

Furthermore, Terada discloses calculating payment to content supplier based on viewing history (Fig. 37: calculate viewing fee from viewing history information; 0153: the broadcaster receives the viewing history information from the viewer; then calculates a fee to be charged to the viewer).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for calculating payment due to content supplier based upon viewing history information of the content and associated information distributed to the user terminal so that the content suppliers will be ensured of accurate payment and will have the incentive to improve upon their services.

and Yacenda discloses payments to content supplier based on first content information of the content to be screened for the user at the real place (0018: the central system uses this data for control, billing and royalty payments).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for calculating payments from the users based on viewing history of the users and payment to content suppliers based on content to be screened at a real place so that content suppliers screening content at a movie theater will be compensated for content viewed by users at user terminals thus motivating content suppliers to supply content to user terminals for a fee.

As to claim 2, Ellis, Terada and Yacenda disclose the content information processing apparatus according to Claim 1 (as rejected above) and Ellis further discloses, further comprising distribution means for distributing a content to the terminal of the user (0009: a television distribution facility).

As to claim 3, Ellis, Terada and Yacenda disclose the content information processing apparatus according to Claim 1 (as rejected above) and Ellis further discloses, further comprising a network interface configured to connect via a communication network to a content distribution terminal for distributing the content to the terminal of the user over the communication network (0012 and Fig. 1B: multiple distribution facilities connected via a communication network). Furthermore, Terada discloses the viewing information processing means receives the viewing history information of the content from the terminal of the user (0153: the broadcaster receives the viewing history information from the viewer).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for receiving the viewing history information of the content from the user terminals so that the users could be appropriately billed and user preferences could be determined for future promotions by content providers.

As to claim 6, Ellis, Terada and Yacenda disclose the content information processing apparatus according to Claim 1 (as rejected above) and Terada further discloses, wherein the viewing information processing means provides the viewing history information to the content supplier (0153: the broadcaster receives the viewing history information from the viewer)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide viewing history information of user to the content supplier to enable the content supplier to determine prospects for future offerings that would be conducive to increased income.

As to claim 9, Ellis, Terada and Yacenda disclose the content information processing apparatus according to Claim 1 (as rejected above) and Yacenda further discloses, further comprising:

user information storage means for storing a relationship of the user to the content supplier (Fig. 1: customer information DB; 0019: device database for tracking user information and user activity).

the incentive means collects a charge from the user having the terminal that has received the distribution of the content and gives the calculated payment, collected from the collected charge, at a predetermined rate, as an incentive to the content supplier (Fig. 2: sales price – *predetermined rate*; 0018: the local device communicates the movie title played, start time and end time back to the central system and the central device database is updated; the central system uses this data for control, billing and royalty payments;).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for storing information pertaining to relationship, for example, billing rates, between a user and content supplier and collect viewing data

from user terminal so that the user could be accurately billed by the content supplier and any incentive payment may be allocated as appropriate.

As to claim 11, Ellis, Terada and Yacenda disclose the content information processing apparatus according to Claim 1 (as rejected above) and Ellis further discloses, wherein the content includes a video content to be screened at the real place (0095: video data may be transmitted using one or more digital channels; 0114: on screen options provide access to program guide hubs);

the content supplier includes an operator of a theater or a video content distributor (0132: options to see movies, to view the staff picks the service provider; 0140: movies that may be available from the system provider); and

the real place includes the theater (0245: local hub may provide local information such as movies playing at local theaters).

As to claim 12, Ellis discloses a content information processing system including a distribution apparatus for distributing a content to a terminal of a user via a network and a server for processing information related to the content distributed by the distribution apparatus, the server comprising

first storage means for storing first content information indicating the content that is to be screened for the user at a real place (0086: storing program guide information; 0245: the local hub may provide information such as local theater productions, movies playing at local theaters) and content supplier information identifying a content supplier

that supplies the content for screening at the real place (0009: the program guide may provide a main menu screen that provides interactive hyperlinks to related items or features within the given category of interest; 0147: list of feedback options; may allow user to send e mail message to the guide provider, television service provider or any specific programmer),

viewing information processing means for specifying second content information indicating that the content is distributed from the distribution apparatus to the terminal of the user (Fig. 29, block 373: displays information related to selected feature; 0009: personalized hubs contain feature and information that are selected by the user; 0136: the user may select any individual movie to find out when it is available or any other action appropriate to selection of the movie), the terminal being configured to allow the user to view the content (0097: server 22 in television distribution facility may be configured in a client-server arrangement in which user television equipment device acts as a client processor; 0124: screen 140 shows a list of movies that are available to be viewed);

Ellis does not explicitly disclose:

viewing history storage means for storing viewing history information including at least the second content information and indicating a history of the user viewing the content on the terminal of the user; and

incentive means for extracting the second content information of the content distributed to the terminal of the user from the viewing history information, specifying that the content supplier is associated with the extracted second content information of the content distributed to the terminal of the user; and

calculating a payment to the content supplier that supplies the content for screening at the real place based on the viewing history information including the second content information and indicating the history of the user viewing the content on the terminal of the user and based on the first content information of the content to be screened for the user at the real place.

Terada discloses:

storing viewing history information including information associated with distributed content (Fig. 16: viewing history information; Fig. 25, block 5260: store viewing history information);

extracting information from the viewing history (Fig. 27, block S292: read viewing history information);

while Terada discloses an associated sponsor (Fig. 2), Yacenda discloses associated content supplier (Fig. 2A, blocks 21, 23 and 24: content provider sends content to distribution device, local device communicates back content is delivered, central system updates central device database)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for storing viewing history of the content distributed to the user terminal, extracting or identifying the content information from the

viewing history and associating the content supplier of the content extracted from the viewing history to enable the system provider to identify content suppliers of the content viewed by the users so that the content supplier could be paid correctly for the content provided by him/her.

Furthermore, Terada discloses calculating payment to content supplier based on viewing history (Fig. 37: calculate viewing fee from viewing history information; 0153: the broadcaster receives the viewing history information from the viewer; then calculates a fee to be charged to the viewer).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for calculating payment due to content supplier based upon viewing history information of the content and associated information distributed to the user terminal so that the content suppliers will be ensured of accurate payment and will have the incentive to improve upon their services.

and Yacenda discloses payments to content supplier based on first content information of the content to be screened for the user at the real place (0018: the central system uses this data for control, billing and royalty payments).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for calculating payments from the users based on viewing history of the users and payment to content suppliers based on content to be screened at a real place so that content suppliers screening content at a movie theater will be compensated for content viewed by users at user terminals thus motivating content suppliers to supply content to user terminals for a fee.

As to claims 13 and 15, Ellis discloses a content information processing method and a computer readable medium including computer executable instructions, wherein the instructions, when executed by a computer, cause the computer to perform, a method comprising:

storing first content information indicating content that is to be screened for a user at a real place (0086: storing program guide information; 0245: the local hub may provide information such as local theater productions, movies playing at local theaters); and content supplier information identifying a content supplier that supplies the content for screening at the real place (0009: the program guide may provide a main menu screen that provides interactive hyperlinks to related items or features within the given category of interest; 0147: list of feedback options; may allow user to send e mail message to the guide provider, television service provider or any specific programmer); and

specifying second content information indicating that the content is distributed to a terminal of the user via a network (Fig. 29, block 373: displays information related to selected feature; 0009: personalized hubs contain feature and information that are selected by the user; 0136: the user may select any individual movie to find out when it is available or any other action appropriate to selection of the movie), the terminal being configured to allow the user to view the content (0097: server 22 in television distribution facility may be configured in a client-server arrangement in which user

television equipment device acts as a client processor; 0124: screen 140 shows a list of movies that are available to be viewed).

Ellis does not explicitly disclose
storing viewing history information including at least the second content information and indicating a history of the user viewing the content on the terminal of the user;

extracting the second content information of the content distributed to the terminal of the user from the viewing history information;

specifying that the content supplier is associated with the extracted second content information of the content distributed to the terminal of the user; and

calculating, by the computer, a payment to the content supplier that supplies the content for screening at the real place based on the viewing history information including the second content information and indicating the history of the user viewing the content on the terminal of the user and based on the first content information of the content to be screened for the user at the real place.

Terada discloses:

storing viewing history information including information associated with distributed content (Fig. 16: viewing history information; Fig. 25,block 5260: store viewing history information);

extracting information from the viewing history (Fig. 27,block S292: read viewing history information);

while Terada discloses an associated sponsor (Fig. 2), Yacenda discloses associated content supplier (Fig. 2A, blocks 21, 23 and 24: content provider sends content to distribution device, local device communicates back content is delivered, central system updates central device database)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for storing viewing history of the content distributed to the user terminal, extracting or identifying the content information from the viewing history and associating the content supplier of the content extracted from the viewing history to enable the system provider to identify content suppliers of the content viewed by the users so that the content supplier could be paid correctly for the content provided by him/her.

Furthermore, Terada discloses calculating payment to content supplier based on viewing history (Fig. 37: calculate viewing fee from viewing history information; 0153: the broadcaster receives the viewing history information from the viewer; then calculates a fee to be charged to the viewer).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for calculating payment due to content supplier based upon viewing history information of the content and associated information distributed to the user terminal so that the content suppliers will be ensured of accurate payment and will have the incentive to improve upon their services.

and Yacenda discloses payments to content supplier based on first content information of the content to be screened for the user at the real place (0018: the central system uses this data for control, billing and royalty payments).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for calculating payments from the users based on viewing history of the users and payment to content suppliers based on content to be screened at a real place so that content suppliers screening content at a movie theater will be compensated for content viewed by users at user terminals thus motivating content suppliers to supply content to user terminals for a fee.

As to claim 16, Ellis discloses a content information processing apparatus comprising:

a first storage device configured to store first content information regarding content to be screened for a user at a real place (0086: storing program guide information; 0245: the local hub may provide information such as local theater productions, movies playing at local theaters), and content supplier information regarding a content supplier that supplies the content for screening at the real place (0009: the program guide may provide a main menu screen that provides interactive hyperlinks to related items or features within the given category of interest; 0147: list of feedback options; may allow user to send e mail message to the guide provider, television service provider or any specific programmer);

a viewing information processor unit configured to specify second content information of the content distributed to a terminal of the user via a network (Fig. 29, block 373: displays information related to selected feature; 0009: personalized hubs contain feature and information that are selected by the user; 0136: the user may select any individual movie to find out when it is available or any other action appropriate to selection of the movie), the terminal configured to allow the user to view the content (0097: server 22 in television distribution facility may be configured in a client-server arrangement in which user television equipment device acts as a client processor; 0124: screen 140 shows a list of movies that are available to be viewed).

Ellis does not explicitly disclose:

a viewing history storage device configured to store viewing history information including at least the second content information and indicating a history of the user viewing the content on the terminal of the user;

an incentive processing unit configured to extract the second content information of the content distributed to the terminal of the user from the viewing history information, specify that the content supplier is associated with the extracted second content information; and

. calculate a payment to the content supplier that supplies the content for screening based on the viewing history information including the second content information and indicating the history of the user viewing the content on the terminal of the user and the first content information of the content to be screened for the user at the real place.

Terada discloses:

storing viewing history information including information associated with distributed content (Fig. 16: viewing history information; Fig. 25, block 5260: store viewing history information);

extracting information from the viewing history (Fig. 27, block S292: read viewing history information);

while Terada discloses an associated sponsor (Fig. 2), Yacenda discloses associated content supplier (Fig. 2A, blocks 21, 23 and 24: content provider sends content to distribution device, local device communicates back content is delivered, central system updates central device database)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for storing viewing history of the content distributed to the user terminal, extracting or identifying the content information from the viewing history and associating the content supplier of the content extracted from the viewing history to enable the system provider to identify content suppliers of the content viewed by the users so that the content supplier could be paid correctly for the content provided by him/her.

Furthermore, Terada discloses calculating payment to content supplier based on viewing history (Fig. 37: calculate viewing fee from viewing history information; 0153: the broadcaster receives the viewing history information from the viewer; then calculates a fee to be charged to the viewer).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for calculating payment due to content supplier based upon viewing history information of the content and associated information distributed to the user terminal so that the content suppliers will be ensured of accurate payment and will have the incentive to improve upon their services.

and Yacenda discloses payments to content supplier based on first content information of the content to be screened for the user at the real place (0018: the central system uses this data for control, billing and royalty payments).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for calculating payments from the users based on viewing history of the users and payment to content suppliers based on content to be screened at a real place so that content suppliers screening content at a movie theater will be compensated for content viewed by users at user terminals thus motivating content suppliers to supply content to user terminals for a fee.

8. Claims 4-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al., U.S. Publication No. 20040117831 (hereinafter referred to as Ellis) in view of Terada, U.S. Publication No. 20030149665 and Yacenda et al., U.S. Publication No. 20040015993 (hereinafter referred to as Yacenda) as applied to claim 1 above, and further in view of Kitadai et al., U.S. Publication No. 20040064837 (hereinafter referred to as Kitadai).

As to claim 4, Ellis, Terada and Yacenda disclose the content information processing apparatus according to Claim 1 (as rejected above) and but do not explicitly disclose, further comprising:

second storage means for storing identification information regarding the user and user assigned-area information indicating an area associated with the user

the first storage means further stores supplier assigned-area information indicating an area associated with the content supplier that supplies the content for screening; and

the incentive means calculates the payment to the content supplier that supplies the content for screening based on the stored user assigned-area information and the stored supplier assigned-area information.

However, Terada discloses user identification (0179: the viewer ID is identification information for identifying a viewer uniquely).

Kitadai discloses user assigned area information (0036: the member information master stores member ID) and supplier assigned-area information (0037: area of the movie theater).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for storing user identification and user and supplier assigned-area information so that the users could be linked with content suppliers in similar assigned-areas which in turn would result in maximizing revenues for content suppliers.

Furthermore, Kitadai discloses payments calculated based on assigned-area information of user and content supplier (0037: compares area of movie theater with the address of the member; 0049: fee setting unit sets a high fee when the address of the member refers to the vicinity of the location of the showing movie theater)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for determining payment to content supplier based on assigned-area of user and content supplier so that that the content supplier could be appropriately compensated for allowing current content to be distributed in the area covered by the content supplier.

As to claim 5, Ellis, Terada and Yacenda disclose the content information processing apparatus according to Claim 1 (as rejected above) but do not explicitly disclose, further comprising registration means for accepting registration of a user assigned-area information indicating an area, associated with the user to store the user assigned-area information in the second storage means.

Kitadai discloses collecting user information and distribution request from user (0036: the member information master stores name, address, age, gender, etc. of a member as associated with the ID of the member; 0048: user who issued a distribution request from the terminal). Examiner notes it is inherent that for a member to be able to request a distribution the member has to be registered with the supplier.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for storing user assigned-area information with user registration information so that the content providers will offer content to accepted users to preclude unauthorized use of content.

As to claim 7, Ellis, Terada and Yacenda disclose the content information processing apparatus according to Claim 1 (as rejected above) but do not explicitly disclose, wherein with reference to the first storage means, the viewing information processing means provides the terminal of the user with information regarding a plurality of content suppliers registered in association with the content distributed to the terminal of the user and accepts the content supplier information of the content supplier as a desired content supplier selected from among the plurality of content suppliers by the user.

Kitadai discloses content suppliers information to a user terminal (0034: various information about a movie theater, in a master; 0032: server 1 is connected to terminal of a film provider and to a terminal of a user). Examiner notes that it is inherent that a film provider be registered to be able to access the system.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide users with information about content suppliers along with their assigned- area information so that users will be supplied content from accepted users to preclude unauthorized suppliers from misusing the system.

9. **Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis at al., U.S. Publication No. 20040117831 (hereinafter referred to as Ellis) in view of Terada, U.S. Publication No. 20030149665, Yacenda et al., U.S. Publication No. 20040015993 (hereinafter referred to as Yacenda) and Kitadai et al., U.S. Publication No. 20040064837 (hereinafter referred as Kitadai) as applied to claim 7 above, and further in view of Strietzel, U.S. Patent No. 6,950,804.**

As to claim 8, Ellis, Terada, Yacenda, and Kitadai disclose the content information processing apparatus according to Claim 7 (as rejected above) but do not explicitly disclose, wherein

the first storage means further stores advertising information of each of the plurality of content suppliers and the viewing information processing means; and

when providing the terminal of the user with the information regarding the plurality of content suppliers, the viewing information processing means provides the user with the advertising information of the content suppliers stored in the first storage means.

Strietzel discloses storing advertisements (Fig. 1: advertising database); and transmitting advertisements with content (col. 3, lines 30-32: download the content item and append advertisement to the requesting user).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide storing advertising information for content suppliers and provide the same to the users so that the content suppliers could benefit from advertising their products and/or services, while supplying the content.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis at al., U.S. Publication No. 20040117831 (hereinafter referred to as Ellis) in view of Terada, U.S. Publication No. 20030149665 and Yacenda et al., U.S. Publication No. 20040015993 (hereinafter referred to as Yacenda) as applied to claim 1 above, and further in view of Strietzel, U.S. Patent No. 6,950,804.

As to claim 10, Ellis, Terada and Yacenda disclose the content information processing apparatus according to Claim 1 (as rejected above) but do not explicitly disclose, wherein the incentive means collects a charge from the user having the terminal that has received the distribution of the content and gives the calculated payment, calculated from the collected charge at a predetermined rate, as an incentive to the content supplier.

Strietzel discloses a charge from the user payment based on predetermined criteria (col. 2, lines 13-14: user is charged each time he accesses content; col. 15, lines 29-30: content providers can negotiate a flat rate or percentage compensation; col. 9, line 1: predetermined number of accesses; col. 14, line 65: predetermined update period). Yacenda discloses collected charge to include incentive payment to the

content supplier (0018: the central system uses this data for control, billing and *royalty payments*).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide determine payment to content supplier at a predetermined rate so that the content suppliers will be compensated for lost revenue from content being supplied at other than real place.

11. Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis at al., U.S. Publication No. 20040117831 (hereinafter referred to as Ellis) in view of Terada, U.S. Publication No. 20030149665 and Yacenda et al., U.S. Publication No. 20040015993 (hereinafter referred to as Yacenda) as applied to claim 1 above, and further in view of Yamanaks, U.S. Publication No. 20050165685.

As to claim 17, Ellis, Terada and Yacenda disclose the content information processing apparatus according to Claim 1 (as rejected above) but do not explicitly disclose, wherein

the viewing history information includes a number of times the user views the content using the terminal of the user; and

the incentive means calculates the payment to the content supplier based on the viewing history information including the number of times the user views the content using the terminal of the user.

Yamanaka discloses viewing history to include number of times content is viewed and calculating payment based on the number of times viewed (Fig. 2: sales history DB and sales price DB; Fig. 12: send purchase record to customer management computer; Fig. 12: calculate watching fee according to purchase record).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for viewing history information to include number of times user viewed the content to enable payment, due to content supplier, to be calculated based on number of times the content was accessed by user thus ensuring accurate billing.

As to claim 18, Ellis, Terada and Yacenda disclose the content information processing apparatus according to Claim 1 (as rejected above) but do not explicitly disclose, further comprising:

second incentive means for calculating a second payment to another content supplier that supplies the content to be screened at a second real place.

Yamanaka discloses a second incentive means (Fig. 2: copyright fee). Examiner notes that the phrase 'that supplies the content to be screened at a second real place' is not a positively recited step but, rather, a intended use of the system and thus given little patentable weight (MPEP 2111.04, 2106 and 2173.05(q)).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for a second incentive means for calculating a payment to another content supplier that supplies content at another place thus allowing

the system to deal with a plurality of user terminals and a plurality of content suppliers resulting in enhanced system capability to serve users and content suppliers in a plurality of assigned-areas.

12. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis at al., U.S. Publication No. 20040117831 (hereinafter referred to as Ellis) in view of Terada, U.S. Publication No. 20030149665, Yacenda et al., U.S. Publication No. 20040015993 (hereinafter referred to as Yacenda) and Yamanaks, U.S. Publication No. 20050165685 as applied to claim 18 above, and further in view of Edenson et al., U.S. Patent No. 7,006,995 (hereinafter referred to as Edenson).

As to claim 19, Ellis, Terada, Yacenda and Yamanaka disclose the content information processing apparatus according to Claim 18 (as rejected above) but do not explicitly disclose, wherein the second incentive means calculates the payment to the another content supplier based on attendance at the real place, attendance at the second real place and the number of screening days.

Edenson discloses number of attendees and number of showings at a first and a second place (col. 7, lines 20-25: enables a data distributor to authorize a chain of theaters; col. 8, lines 64-67: usage information concerning the time and date of showing, or the number of attending the showing could also be stored)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Ellis to provide for determining payment to another content supplier for screening at one or more real places by including additional tracking field to include attendance and number of screenings that could be used as basis of payment thus providing incentive to content suppliers to provide more popular content.

Response to Arguments

13. Applicant's remarks, submitted on April 15, 2009 with Request for Continued Examination received on May 15, 2009 have been considered. Examiner's response follows:

a. **Claim rejections under 35 USC 103:**

Applicant's arguments with respect to Claims 1- 13 and 15-19 have been fully considered but are not persuasive and/or are moot in view of new grounds of rejection.

b. With regard to amended claims 1, 12, 13, 15 and 16

(i) Applicant argues that Ellis, Babu and Strietzel fail to teach or suggest "storage means for storing content information" indicating content information that is to be screened at a real place and "content supplier information" identifying a content supplier that supplies content for screening t a real place. Examiner notes that Ellis discloses means for storing content information and content supplier information (0086: storing program guide information; 0245: the local hub may provide information such as local theater productions, movies playing at local theaters; 0009: the program guide may provide a main menu screen that provides interactive hyperlinks to related

items or features within the given category of interest; 0147: list of feedback options; may allow user to send e mail message to the guide provider, television service provider or any specific programmer). Examiner further notes that stored information *can be used for screening at a real place*. Therefore, Applicant's argument is not persuasive.

(ii) Applicant further argues that Ellis, Babu and Strietzel fail to teach or suggest claim elements as amended, "viewing history storage means for storing viewing history information indicating a history of the user viewing the content" and further fail to Teach or suggest "incentive means for calculating a payment to the content supplier based on the viewing history information including the second content information based on the first content information". In support, Applicant cites from specification, specifically, Figure 1, explaining the system functions. Examiner notes that the claims are given their broadest reasonable interpretation in light of the supporting disclosure and limitations appearing in the specification but not recited in the claim are not read into the claim (MPEP 2106 II C). Examiner further notes that these arguments are directed towards the intended use and hopeful results of the invention and not towards the steps performed in the claims. Therefore, the Applicant's argument is not persuasive. Furthermore, Applicant's arguments are moot in view of new grounds of rejection.

c.. With regard to dependent claims 2-11 and 17-19 depending directly or indirectly from amended claim 1,, Applicant's arguments remain non persuasive or are moot in view of new grounds of rejection.

d. Applicants are reminded that a **recitation of intended use** must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See e.g. *In re Collier*, 158 USPQ 266, 267 (CCPA 1968) (where the court interpreted the claimed phrase "a connector member for engaging shield means" and held that the shield means was not a positive element of the claim since "[t]here is no positive inclusion of 'shield means' in what is apparently intended to be a claim to structure consisting of a combination of elements."

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kris Mittal whose telephone number is (571)270-5492. The examiner can normally be reached on Monday-Thursday 7.30 AM-5.00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stamber Eric can be reached on 571-272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KM

7/9/09

/James W Myhre/

Primary Examiner, Art Unit 3688